



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

August 25, 2014

Craig Boesel
Barkley Irrigating Company
14 Bear Creek Road
Winthrop, WA 98862

**RE: Short Term Authorization CS4-129470CL@3 to
Change the Point Of Diversion for Claim No. 129470.**

On June 28, 2013, Barkley Irrigation Company (BIC) of Winthrop, Washington, filed a temporary application to add a point of diversion (POD) for 20 cubic-feet per second (cfs), 3,622.5 acre feet per year (af/yr), located on the Methow River within the NW¼NW¼ of Section 13, T. 34 N., R. 21 E.W.M., adjacent to Okanogan County parcel No. 3421240066.

BIC filed Surface Water Right Claim No. 129470 to divert 58.95 cfs up to 42,446 acre-feet per year (ac-ft/yr) to irrigate 851 acres on June 25, 1974. The place of use for the irrigation is described as:

- Parts of Sections 13, 24 and 25, T. 34 N., R. 21 E.W.M.
- Parts of Sections 19, 30 and 31, T. 34 N., R. 22 E.W.M.
- Parts of Sections 5, 6 and 8, T. 33N., R. 22 E.W.M.
- All lying east of the Methow River in Okanogan County.

BIC diverts water from a side channel of the Methow River. When flows in the Methow River decrease in the late summer BIC uses a pushup dam in the main-stem Methow River to increase the flow in the side channel. By changing the POD to a downstream location they will be able to pump directly into the BIC canal and will avoid using heavy equipment within the stream channel.

The proposed POD for this project is downstream on the Methow River located within:

- POD 1 Parcel No. 3421240066, within the NE¼NW¼ of Section 24, T. 34 N., R. 21 E.W.M., located in Okanogan County.

Beneficial Use

The POD may be changed for a water right claim under RCW 90.03.390. The portion of the water that is to be changed must have been put to beneficial use without a five year continuous period of nonuse.

An investigation of this water right was conducted by Jacquelyn Metcalfe of the Department of Ecology (Ecology). Review of 2009 and 2011 aerial photos, and Ecology records show that irrigation of approximately 800 acres has occurred within the boundaries of the BIC. This temporary application will add an additional point of diversion on the Methow River not to exceed 20 cfs.



Protests Received

Date received: August 22, 2013

Name of protestor: Lee Bernheisel, Okanogan Wilderness League

Address of protestor: 90 Twisp Carlton Rd, Carlton, WA 98814

Issue(s): Mr. Bernheisel and the Okanogan Wilderness League object to the temporary change application submitted by Barkley Irrigation Company stating:

1. There is a lack of information on the proposal and no comprehensive analysis of the operation is available.
2. Public interest issues were not addressed.
3. Concerns about surface water being the "cheapest and most logical" way to supply water for BIC through individual wells instead of surface water.
4. The appropriateness of private organization involvement was not mentioned and the public right to know (including Ecology's) is being violated when a private group is shielded from disclosure.

Ecology's analysis

Ecology has reviewed the comments. RCW 90.03.390 does not provide Ecology with authority to apply a public interest test. Ecology notes that the National Oceanic and Atmospheric Administration (NOAA) provided assistance to Barkley in 2012. The purpose of the public funding was to eliminate Barkley's need to enter the Methow River and construct a push-up dam during the period of time when salmon are present. The requested point of diversion is downstream from the original point of diversion and when it is used, it benefits instream flow in the reach between the two points. Ecology provides financial assistance to Trout Unlimited who assisted NOAA and Barkley to put the temporary system in place.

Impairment

The Methow River is a tributary to the Columbia River. The requested period of use for this Temporary Permit is July 10, 2013 through October 31, 2015. As this is a downstream move there will be more water within the effected reach of the Methow River and will not impair exiting water rights.

Conclusions and Decision

There is water available for the project to take place on a seasonal basis without impairing existing water rights.

This Short Term Authorization is subject to the following limitations and provisions:

1. The priority date of this water right is June 1, 1900.
2. The point of diversion will be located within parcel No. 3421240066, within the NE¼NW¼ of Section 24, T. 34 N., R. 21 E.W.M., located in Okanogan County.
3. The place of use will be located within:

- Parts of Sections 13, 14 and 25, T. 34 N., R. 21 E.W.M.
 - Parts of Sections 19, 30 and 31, T 34 N., R. 22 E.W.M.
 - Parts of Sections 5, 6 and 8, T. 33 N., R. 22 E.W.M.
4. The period of use will be from August 25, 2014 through October 31, 2015. This Authorization will expire November 1, 2015, unless sooner revoked for cause.
 5. The diversion shall not exceed 20 cfs and 3,622.5 ac-ft/yr.
 6. The purpose of use is for Irrigation of 851 acres.
 7. The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch.
 8. The operator of the system under this authorization shall:
 - Be aware of the parameters and provisions and operate accordingly.
 - Have a copy of this Short Term Authorization.
 - Provide said copy of this Short Term Authorization upon request by Department of Ecology staff.
 9. Under RCW 90.03.360, measuring is required for all surface water diversions, and all withdrawals of ground water in fish-critical basins. Whenever water is being diverted, volume of water shall be recorded and maintained by the permittee. These readings shall be documented by time, date, and the person conducting the measurements. Copies of these records shall be submitted to the Department of Ecology annually.
 10. The following information shall be included with each submittal of water use data:
 - owner,
 - contact name if different,
 - mailing address,
 - daytime phone number,
 - WRIA,
 - Permit No., and
 - source name and maximum instantaneous rate of diversion (cfs).
 11. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.
 12. This Short Term Authorization shall in no way excuse the applicant from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
 13. The water source and place of use may not be located entirely upon land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by the Department of Ecology for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess.
 14. No water right in perpetuity shall result from this Short Term Authorization.

YOUR RIGHT TO APPEAL

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>

Sincerely,



Robert F. Barwin, Acting Section Manager
Water Resources Program/CRO

RFB:JM:ss/140835

Enclosure: Your Right to Be Heard

By certified mail: 7010 0290 0000 7127 1887

cc: Aaron Penvose, Trout Unlimited, Washington Water Project
Paul La Riviere, Washington Department of Fish and Wildlife
Philip Rigdon, Director Natural Resources Division Yakama Nation
Lois Trevino, Water Administrator, Colville Confederated Tribes